

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL INDUSTRY)
AVERAGE WHOLESALE PRICE)
LITIGATION)

MDL NO. 1456
Master File No. 01-12257-PBS

THIS DOCUMENT RELATES TO

Subcategory Case No. 06-11337

*United States of America ex rel. Ven-A-
Care of the Florida Keys, Inc. v. Abbott
Laboratories, Civil Action No. 06- 11337*

Hon. Patti B. Saris

*United States of America ex rel. Ven-A-
Care of the Florida Keys, Inc. v. Dey
L.P., et al., Civil Action No. 05- 11084*

*United States of America ex rel. Ven-A-
Care of the Florida Keys, Inc. v.
Boehringer Ingelheim Corp., et al., Civil
Action No. 07- 10248*

*United States of America ex rel. Ven-A-
Care of the Florida Keys, Inc. v. Abbott
Laboratories, Civil Action No. 07-11618*

**CONSENT MOTION TO MODIFY BRIEFING SCHEDULE AND
CONSOLIDATE OPPOSITION TO DEFENDANTS'
MOTIONS TO DISMISS INTO ONE MEMORANDUM OF LAW**

Ven-A-Care of the Florida Keys, Inc. ("Plaintiff", "Relator" or "Ven-A-Care") requests, with the agreement of the other Parties, that the Court modify the briefing schedule in the above referenced cases, extend the time limits of the briefing schedule and allow the Relator to consolidate its arguments in opposition to the Defendants'

MDL NO. 1456
Master File No. 01-12257-PBS
Subcategory Case No. 06-11337

Motions to Dismiss in three of the above referenced cases into one memorandum of law and in support states as follows:

Ven-A-Care is the Relator in the following cases: *United States of America ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Civil Action No. 06-11337* (“Abbott Case No. 06-11337”); *United States of America ex rel. Ven-A-Care of the Florida Keys, Inc. v. Dey L.P., et al., Civil Action No. 05- 11084* (the “Dey Case”); *United States of America ex rel. Ven-A-Care of the Florida Keys, Inc. v. Boehringer Ingelheim Corp., et al., Civil Action No. 07- 10248* (the “Roxane Case”); and *United States of America ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Civil Action No. 07-11618* (“Abbott Case No. 07-11618”). For purposes of the instant Motion, Ven-A-Care will refer to Abbott Case No. 06-11337, the Dey Case and the Roxane Case collectively as the “Ven-A-Care intervened cases.” The Ven-A-Care intervened cases are on a separate briefing schedule from Abbott Case No. 07-11618.

The Dey Case, the Roxane Case and Abbott Case Number 06-11337

1. Defendant Abbott Laboratories, Inc. (“Abbott”), Defendants Dey Inc., Dey L.P., and Dey L.P., Inc. (the “Dey Defendants”) and Defendants Boehringer Ingelheim Corp., Boehringer Ingelheim Pharmaceuticals, Inc., Boehringer Ingelheim Roxane, Inc., and Roxane Laboratories, Inc. (the “Roxane Defendants”) have each filed motions to dismiss for lack of subject matter jurisdiction in the above referenced intervened actions based upon the False Claims Act’s “public disclosure bar”:

- a. *The Roxane Defendants’ Motion to Dismiss for Lack of Subject Matter Jurisdiction and The Roxane Defendants’ Memorandum in*

MDL NO. 1456
Master File No. 01-12257-PBS
Subcategory Case No. 06-11337

Support of Motion to Dismiss for Lack of Subject Matter

Jurisdiction. [Master Docket 6196 & 6197; Subcategory Docket 253 & 254];

- b. *Defendants Dey, Inc., Dey, L.P. and Dey L.P., Inc.'s Motion to Dismiss the Relator's Complaints for Lack of Subject Matter Jurisdiction and Defendants Dey, Inc., Dey, L.P., and Dey L.P., Inc.'s Memorandum of Law in Support of their Motion to Dismiss the Relator's Complaints for Lack of Subject Matter Jurisdiction.*
[Master Docket 6209 & 6210; Subcategory Docket 265 & 267];
- c. *Abbott Laboratories, Inc.'s Motion to Dismiss for Lack of Subject Matter Jurisdiction Under the False Claims Act's Public Disclosure Bar and Abbott Laboratories, Inc.'s Memorandum in Support of Motion to Dismiss for Lack of Subject Matter Jurisdiction Under the False Claims Act's Public Disclosure Bar in Case No. 06-11337.*
[Master Docket 6179 & 6183; Subcategory Docket 250 & 252]

2. On July 7, 2009, Ven-A-Care, the United States, Defendant Abbott, the Dey Defendants and the Roxane Defendants filed a Joint Motion for Entry of Additional Briefing Schedule [Master Docket 6252; Subcategory Docket 273] setting forth the following briefing deadlines for the Dey case, the Roxane case and Abbott Case Number 06-11337:

MDL NO. 1456
Master File No. 01-12257-PBS
Subcategory Case No. 06-11337

Further proceedings on the Defendants' motions to dismiss and supporting memoranda (Abbott, M.D. 6179 & 6183; Roxane M.D. 6196 & 6197; Dey M.D. 6206 & 6209), and Plaintiffs' responses to those sections of Defendants' summary judgment memoranda related to each Defendant's motion to dismiss (Roxane/BI SJ Memo at 35-37; Abbott SJ Memo at 39-40; and, Dey SJ Memo at 39-40) shall be deferred until after the conclusion of the parties' summary judgment briefing, as follows:

Oppositions due: October 19, 2009
Replies due: November 2, 2009
Sur-replies due: November 16, 2009

The Court granted the July 7, 2009 Motion setting the proposed briefing schedule.

[Docket Order July 13, 2009]

3. For the past few months, the Relator has been heavily involved in expert depositions in related state AWP cases, discovery and Federal Rule of Civil Procedure 30(b)(6) depositions in the Actavis cases and briefing and hearings related to the Schering settlement. Due to those matters as well as the Relator's need to address this Court's recent October 2, 2009 ruling on the Defendants' Motion to Dismiss in the Actavis case regarding the "public disclosure bar" within the Relator's Opposition to the Motions to Dismiss in the above referenced actions, the Relator needs an additional two weeks to file its Opposition to the Defendants' Motions to Dismiss.

4. The Parties in the intervened cases have conferred regarding Ven-A-Care's request for additional time and have agreed to the following modification of the briefing schedule:

Further proceedings on the Defendants' motions to dismiss and supporting memoranda in the intervened cases (Abbott, Master Docket 6179 & 6183; Roxane Master Docket 6196 & 6197; Dey Master Docket

MDL NO. 1456
Master File No. 01-12257-PBS
Subcategory Case No. 06-11337

6206 & 6209), and Plaintiffs' responses to those sections of Defendants' summary judgment memoranda related to each Defendant's motion to dismiss (Roxane/BI SJ Memo at 35-37; Abbott SJ Memo at 39-40; and, Dey SJ Memo at 39-40) shall be deferred until after the conclusion of the parties' summary judgment briefing, as follows:

Oppositions due: November 2, 2009
Replies due: November 23, 2009
Surreplies due: December 11, 2009 (accounting for the Thanksgiving holiday)

5. Additionally, for the convenience of the Court, the Relator desires to consolidate its Opposition to the motions in the three intervened cases filed by the Dey Defendants, the Roxane Defendants and filed by Abbott in Case Number 06-11337 into one memorandum of law not to exceed 50 pages.

Abbott Case No. 07-11618

6. Defendant Abbott has also filed a motion to dismiss for lack of subject matter jurisdiction in Abbott Case No. 07-11618 based upon the False Claims Act's "public disclosure bar": *Abbott Laboratories, Inc.'s Motion to Dismiss for Lack of Subject Matter Jurisdiction Under the False Claims Act's Public Disclosure Bar and Abbott Laboratories, Inc.'s Memorandum in Support of Motion to Dismiss for Lack of Subject Matter Jurisdiction Under the False Claims Act's Public Disclosure Bar Case No. 07-11618*. [Master Docket 6398 & 6399; Subcategory Docket 382 & 383].

7. On July 16, 2009, Ven-A-Care and Defendant Abbott filed, in Case No. 07-11618, a Joint Motion to Set Revised, Agreed Upon Briefing Schedule [Master

MDL NO. 1456
Master File No. 01-12257-PBS
Subcategory Case No. 06-11337

Docket 6267; Subcategory Docket 280] setting forth the following briefing deadlines for Motions in the Abbott Case No. 07-11618:

Oppositions due: October 23, 2009

Replies due: November 20, 2009

Sur-replies due: December 4, 2009

The Court granted the July 16, 2009 Motion setting the proposed briefing schedule. [Docket Order July 23, 2009].

8. For identical reasons to those above, the Relator requests that the Court modify the briefing schedule in Abbott Case No. 07-11618. Ven-A-Care, with the agreement of defense counsel in Abbott Case Number 07-11618, requests that the Court modify the Order on the Joint Motion to Set Revised, Agreed Upon Briefing Schedule entered by the Court on July 16, 2009 as follows:

Responses/Oppositions due: November 2, 2009

Replies due: December 4, 2009 (accounting for the Thanksgiving holiday)

Sur-replies, if any, due: December 18, 2009

9. The Relator does not request to consolidate its Opposition to Abbott's Motion to Dismiss in Case Number 07-11618 with the Opposition to the other motions to dismiss. However, to the extent that there are overlapping legal authorities, arguments, issues or facts, the Relator requests that the Court allow it to incorporate the arguments of the opposition to the Motions to Dismiss filed in the Ven-A-Care intervened cases by reference in an effort to limit duplicative filings.

MDL NO. 1456
Master File No. 01-12257-PBS
Subcategory Case No. 06-11337

WHEREFORE the Relator respectfully requests that the Court grant this motion, enter the proposed order extending the time limits for the briefing schedule in the Ven-A-Care intervened cases and in Abbott Case 07-11618, allowing the Relator to file a consolidated opposition not to exceed 50 pages in the Ven-A-Care intervened cases, and allowing the Relator to incorporate by reference arguments of the Opposition to the Motions to Dismiss filed in the Ven-A-Care intervened cases in its Opposition to Abbott's Motion to Dismiss in Abbott Case No. 07-11618 in an effort to limit duplicative filings .

Dated: October 8, 2009

Respectfully submitted,

For the Relator,
Ven-A-Care of the Florida Keys, Inc.

/s/ Alison W. Simon
James J. Breen
Alison W. Simon
The Breen Law Firm
P. O. Box 297470
Pembroke Pines, FL 33029-7470
Phone: 954-874-1635
Fax: 954-874-1739

MDL NO. 1456
Master File No. 01-12257-PBS
Subcategory Case No. 06-11337

CERTIFICATE OF SERVICE

I hereby certify that I have this 8th day of October, 2009 caused an electronic copy of the above CONSENT MOTION TO MODIFY BRIEFING SCHEDULE AND CONSOLIDATE OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS INTO ONE MEMORANDUM OF LAW to be served on all counsel of record via electronic service pursuant to Paragraph 11 of Case Management Order No. 2 by sending a copy to LexisNexis File & Serve for posting and notification to all parties.

/s/ Alison W. Simon
Alison W. Simon